

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

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|------------------------------|---|------------------------|
| DARRELL JAMES PARKS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action |
| |) | No. 06-3375-CV-S-RED-H |
| JOSEPH E. GUNJA, Warden, |) | |
| United States Medical Center |) | |
| for Federal Prisoners, |) | |
| |) | |
| Respondent. |) | |

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate Judge for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition and has submitted to the undersigned a report and recommendation that the petition be dismissed without prejudice.

Petitioner has filed pro se exceptions to the report and recommendation of the magistrate judge, in which he reiterates the allegations of his original petition and makes the conclusory allegation that he has been denied his right to exhaust his administrative remedies. A review of the files and records in this case establishes initially that the petitioner has not exhausted administrative remedies. Additionally, a review of the disciplinary hearing officer's report

establishes that the petitioner was present with a staff representative at his disciplinary hearing and that the report from a local hospital that he had tested positive for Benzodiazepine provided some evidence for the decision reached. Petitioner's exceptions must therefore be overruled. It is

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis;¹ it is further

ORDERED, ADJUDGED and DECREED that the petition filed herein be dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
UNITED STATES DISTRICT JUDGE

Date: March 14, 2007

¹ Petitioner states that he has requested withdrawal of the \$5.00 filing fee from his commissary account, but there is no indication that it has been paid.